Supreme Court, U.S.
FILED
04 359 JUL 26 2004
OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

EDWARD J. HABERERN, M.D.
Petitioner

v.

SPRAGUE & SPRAGUE, a Law Firm, et al.
Respondents

On Petition For Writ of Certiorari
To the Supreme Court of the Commonwealth of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

Andrew K. Parker, Esquire
I.D. No. 7635
Counsel of Record for Petitioner
371 Tamarack Drive
Allentown, PA 18104
(610) 776-8410

QUESTIONS

I. Where the current Pennsylvania Constitution, Article 1, section 11, Article V, section 10(c) of the Constitution of 1968 and Rule 239(b)(1) of the Pennsylvania Rules of Civil Procedure together combine and declare that the Pennsylvania Supreme Court is the sole creator of the Pennsylvania Rules of Civil Procedure and therefore has the exclusive responsibility for administration of the judicial system and all procedural problems inherent therein:

a) Has the Supreme Court of Pennsylvania abused its discretion and erred in failing and refusing to enforce its own Rules and by failing to explain, consider and remand petitioner's appeal on the merits and review petitioner's request for certiorari, because of an administrative default by the Prothonotary's negligent or fraudulent misapplication of P.R.C.P. No.236(a)(2), the Prothonotary's exclusive duty to give Notice of Judgment, all of which has prevented petitioner from Jury trial of his case and/or filing a timely appeal, thereby depriving petitioner of his rights and guarantees in violation of the Seventh and Fourteenth Amendments and Pennsylvania public policy, especially where, as here, there is in fact no valid and official Summary Judgment in this case and no judgment has been filed in the Office of the Prothonotary of Philadelphia County, despite a fraudulent Docket entry to the contrary?

PARTIES TO THESE PROCEEDINGS
WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Respondents: SPRAGUE & SPRAGUE, a Law Firm
RICHARD A. SPRAGUE
THOMAS A. SPRAGUE
WILLIAM H. WOLF, JR.
JAMES J. WEST
H. COLEMAN SWITKAY
VINCENT F. PRESTO
MARIANNE FRESCO
GOEFFREY C. JARVIS
TRACEY MOONEY SCHAEFFER
JOSEPH R. PODRAZA, JR.
THEODORE J. CHYLACK
JOSEPH J. MCALEE
PETER KONOLIGE
T. TRUXTON HARE, III and
DAVID S. LUBIN

Counsel of record for all defendants are:

Alan J. Davis, Esquire &
Martin C. Bryce, Jr., Esquire
BALLARD SPAHR
1735 Market Street, 51st Floor
Philadelphia, PA 1903
(215) 665-8500

PENNSYLVANIA
REPORTS OF OPINIONS AND ORDERS ENTERED

Reports or Opinions: NONE at each stage.

Orders Entered:

Philadelphia Court of Common Pleas;

Summary Judgment - NONE - Only Docket Entry on 4/8/02

Panepinto Order of 2/28/03 - Denied Appeal NPT - No Opinion

Superior Court: Per Curiam Order - Denies Petition for Review No Opinion

Supreme Court: Per Curiam Order - 1/30/04 - Denied Petition for Allowance of Appeal & Request for Certiorari, treated as a Petition for Relief Pursuant to Pa.R.A.P. 123 - No Opinion

Per Curiam Order - 4/26/04 - Denied Application for Reargument - No Opinion

JURISDICTIONAL STATEMENT

The matter of *Failing to File any Judgment* or Opinion but on April 8, 2002 creating a false Philadelphia County Common Pleas Docket Entry purporting to grant Summary Judgment, with prejudice, without any Opinion or Notice of Judgment under PA R.C.P No.236(a) was unsuccessfully appealed NPT, denied without an Opinion, then Appealed to and Denied by Per Curiam Order of the Superior Court and then by Appeal and Request for Writ of Certiorari to the Supreme Court of Pennsylvania which on January 30, 2004 Denied Relief, Per Curiam. An Application for Rehearing, setting forth the Pennsylvania Supreme Court's Constitutional Duty to correct the Rule 236(a)(2) Notice problem was Denied Per Curiam by the Pennsylvania Supreme Court on April 26, 2004, notwithstanding Violation, inter alia, of the Seventh and Fourteenth Amendments to the United States Constitution.

This Honoraable Court has jurisdiction under 28 U.S.C., sections 2191(e) and 1257 and United States Supreme Court Rule 13.3.

PERTINENT PROVISIONS OF THE UNITED STATES AND PENNSYLVANIA CONSTITUTIONS AND PENNSYLVANIA RULES OF CIVIL PROCEDURE

United States Constitution:

Seventh Amendment
Fourteenth Amendment

Constitution of the Commonwealth of Pennsylvania:

Article 1, section 6 and
Article 1, section 11

Pennsylvania Rules of Civil Procedure:

Rule 236(a)(2)
Rule 239(b)(1)
Rule 1035(a)

STATEMENT OF THE CASE

Petitioner's Complaint, Jury Trial Demanded, against SPRAGUE & SPRAGUE, a Law Firm, et al., filed to No. 003430 on 10/24/01 in the Philadelphia Court of Common Pleas, alleged that participating defendants, by their continuing Malpractice and Fraud in plaintiff-petitioner's name, had filed unconscionable, feckless, six (6) year litigation first in Philadelphia and another in Lehigh Counties (all transferred to Lehigh County) in which, inter alia, The Honorable James Knoll Gardner of the Court of Common Pleas of Lehigh County, Pennsylvania finally determined that the Complaint

filed by Sprague & Sprague alleged ***No Legitimate Causes of Action*** and further that ***the Statute of Limitations had run before suit began on the damages alleged*** by SPRAGUE & SPRAGUE. Nevertheless, SPRAGUE & SPRAGUE over six (6) years continuously billed Petitioner-plaintiff monthly for hourly fees in a total sum of $592,727.79 for unaccounted for open-ended, undefined fees. In addition, plaintiff accrued additional expenditures and attorney's fees of $35,860.19 to proceed in the Philadelphia case with a SPRAGUE & SPRAGUE worthless appeal to the Superior Court, (later transferred to the Commonwealth Court of Pennsylvania). SPRAGUE & SPRAGUE'S misconduct was clearly and unequivocally set forth, defined and confirmed in and by the Opinion of Judge. Ledbetter on 1/23/02 in the Commonwealth Court in No. 2870 C.D. 1999, which was attached to the Petitioner' Complaint as Exhibit "D". For these and other reasons, the Complaint demanded an award of substantial Punitive Damages.

On 1/11/02 defendants via Alan J. Davis, Esquire, BALLARD SPAHR et al. simultaneously filed an Answer and New Matter AND A MOTION FOR SUMMARY JUDGMENT, at a time when the pleadings were not closed. Plaintiff promptly responded to the New Matter and to defendants' motion for summary judgment by affidavit and many noteworthy Memorandum exchanges, pending a hearing and argument before the court, which never came. The argument on the summary judgment in this case, where over Half a Million ($500,000.00) Dollars had been deviously extracted from Petitioner's pocket by a prominent attorney's office, was never scheduled. Instead, a false docket entry planted by AN UNKNOWN PERSON on April 8, 2002, set forth, to wit:

"08-APR-02 15:49:24 ORDER ENTERED/236 NOTICE GIVEN
HUGHES, RENEE C
70-02010570 IT IS ORDERED THAT DEFTS' MOTION FOR SUMMARY JUDGMENT IS GRANTED AND THIS ACTION IS DISMISSED WITH PREJUDICE...BY THE COURT, JUDGE HUGHES,
4-3-02"

No Rule of C. P. No. 236(a)(2) Notice was ever sent or received

by the Plaintiff. No Judgment was ever found by the Office of the Docket Clerk. No Judgment (nor Judicial Opinion herein examined the merits and) ever existed, *except as Exhibit "A" attached to the Memorandum of Law in Support of Defendants' Response to Plaintiff's PETITION FOR APPEAL NUNC PRO TUNC on January 6, 2003.* The burden of proof shifted to the Defendants when Defendants ignored, failed and deliberately refused to answer Petitioner-plaintiff's ten (10) question colloquy which might have firmly established the authenticity of the BALLARD SPAHR *unconfirmed offer of the Hughes purported judgment,* as contained in Volume I, pages 67a and 68a of the Reproduced Record filed in the Supreme Court of Pennsylvania, in PLAINTIFF'S ANSWER TO DEFENDANT'S RESPONSE TO PLAINTIFF-PETITIONER'S ANSWER TO RESPONDENT'S SUR-REPLY IN SUPPORT OF RESPONSE TO PLAINTIFF'S PETITION FOR APPEAL NUNC PRO TUNC. That burden still has never been met. Neither Petitioner-plaintiff nor Petitioner's counsel of record ever received any Notice or knowledge that a certain Judge Hughes had been appointed by someone to hear the summary judgment matter in the case at bar, until after the mysterious docket entry appeared on the record in this case.

Defendants by aid of counsel by their deceitful acts sought to and did completely circumvent and change all of the local rules, pertinent laws, procedural rules and Notice of Judgment proceedings to the detriment of the petitioner-plaintiff and to the benefit of the defendants, thereby warranting this final appeal for justice through this Petition for Writ of Certiorari.

ARGUMENT

The road to further fraud and manipulation by the misuse and circumvention of the Pennsylvania Rules of Civil Procedure, as demonstrated by the futility of appeal in this case, is now wide open, unless the Pennsylvania Supreme Court is held to task in enforcing and correcting the abuse of the Pennsylvania Rules of Civil Procedure and in construing them according to their true intent and clear and unequivocal meaning that they themselves created and for which said Court is bound by Constitutional

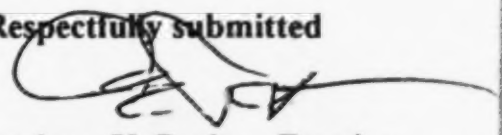
Responsibility to Administer and cure those problems as they arise.

Cases of this nature rarely get heard by the United States Supreme Court and are quickly suppressed or become too expensive to continue in the ends of justice. No cases have been reported, or found by counsel to exist, where prominent law firms are found to bill their clients monthly for feckless litigation, made to continue over a long period of time with no accounting for who and what was done, without suffering severe punitive damages, and then, when suit is brought by the client against them, have other prominent law firms in the same municipality manipulate the civil procedural system to effect additional fraud on the same client to prevent him from having his day in court and recovering at least his improperly acquired fees and expenses paid *as the Court and Jury may finally decide.* This serves as a prime example of a miscarriage of justice in the case at bar and should never be tolerated, much less be suppressed by rendering Judgment without Judicial Opinions.

The Seventh Amendment guarantees trial by jury in all cases where the amount exceeds $20.00. The Fourteenth Amendment prevents the taking of money without due process and guarantees equal protection under the laws and is construed to apply to the States.

Why shouldn't the Pennsylvania Supreme Court do its mandatory job and correct procedural problems like those that arose in the case at bar, instead of apparently condoning suppression and cover up by a failure to render Opinions on the Merits in the case at bar?

Respectfully submitted



Andrew K. Parker, Esquire
I.D. 7635
Counsel of Record
371 Tamarack Drive
Allentown, PA 18104
(610) 776-8410

No.

In The

Supreme Court of the United States

EDWARD J. HABERERN, M.D.
Petitioner

v.

SPRAGUE & SPRAGUE, a Law Firm, et al.
Respondents

On Petition For Writ of Certiorari
To the Supreme Court of the Commonwealth of Pennsylvania

APPENDIX OF PETITION FOR WRIT OF CERTIORARI

Andrew K. Parker, Esquire
I.D. No. 7635
Counsel of Record for Petitioner
371 Tamarack Drive
Allentown, PA 18104
(610) 776-8410

OPINIONS, ORDERS, FINDINGS OF FACT AND CONCLUSIONS OF LAW

None. This case has been given the silent treatment since the mysterious docket entry granting summary judgment on April 8, 2002, with no summary judgment having been received by the Prothonotary of the Court of Common Pleas of Philadelphia County, Pennsylvania.

FIRST DOCKET ENTRY "WITHOUT AN ORDER" SOUGHT TO BE REVIEWED

On April 8, 2001 an unknown person, ostensibly with fraudulent intent to circumvent Rule 236(a) of the Pennsylvania Rules of Civil Procedure and avoid giving Notice of Judgment, placed a fraudulent Docket Entry in the within case of Edward J. Haberern, M.D. v. SPRAGUE & SPRAGUE, a Law Firm, et al., Docket No. 003430 in the Office of the Prothonotary of the Court of Common Pleas of Philadelphia County, Pennsylvania, when there was no prior notice of judicial appointment, no prior hearing, no prior argument, in fact no such summary judgment had ever been filed of record and no such judgment in fact could be found by and in the said Office of the Prothonotary and no copy from which to appeal had ever been sent to the plaintiff's attorney, pursuant to Rule 236(a)(2) of the Pennsylvania Rules of Civil Procedure. Said Docket Entry consisted of the following:

08-APR-02 15:49:24 ORDER ENTERED/236 NOTICE GIVEN
HUGHES, RENEE C
70-02010570 IT IS ORDERED THAT DEFTS' MOTION FOR SUMMARY JUDGMENT IS GRANTED AND THIS ACTION IS DISMISSED WITH PREJUDICE...BY THE COURT, JUDGE HUGHES,
4-3-02"

SECOND ORDER SOUGHT TO BE REVIEWED :

"Alan J. Davis, Esquire
I.D. No. 03853
Martin C. Bryce, Jr., Esquire
I.D. No. 59409
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1735 Market Street, 51ST Floor
Philadelphia, PA 19103
215/665-8500

Attorneys for Defendants Sprague and Sprague, Richard A. Sprague, ThomasA. Sprague, William H. Wolf, Jr., a/k/a Bill Wolf, James J. West, H. Coleman Switkay, Vincent F. Presto, Geoffrey R.Johnson, Goeffrey C. Jarvis, Joseph R. Podraza. Jr., Theodore J. Chylack, Joseph J. McAlee, Peter Konolige,T. Truston Hare, III and David S. Lubin

---

EDWARD J. HABERERN, M.D.	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
Plaintiff,		CIVIL ACTION - LAW
	:	
v.	:	OCTOBER TERM, 2001
	:	
SPRAGUE AND SPRAGUE, a Law Firm, et al.,	:	NO. 003430
	:	
Defendants	:	

ORDER

AND NOW, this 28 day of Feb, 2003. It is ORDERED that plaintiff's Petition for Appeal Nunc Pro Tunc is DENIED.

BY THE COURT

S/ *Panepinto*
J.

COPIES SENT
PURSUANT TO Pa. R.C.P. 236(b)
FEB 28 2003
First Judicial District of Pa.
User I.D. PAP

PHL_A#1700631 v1"

THIRD ORDER SOUGHT TO BE REVIEWED

"IN THE SUPREME COURTOF PENNSYLVANIA
EASTERN DISTRICT

EDWARD J. HABERERN, M. D. No. 67 EM 2003

Petitioner,

v.

SPRAGUE & SPRAGUE, A LAW FIRM, RICHARD A. SPRAGUE, THOMAS A. SPRAGUE, WILLIAM H. WOLF, JR. JAMES J. WEST, H. COLEMAN SWITKAY, VINCENT F. PRESTO, MARIANNE FRESCO, GEOFFREY C. JARVIS, TRACEY MOONEY SCHAEFFER, JOSEPH R. PODRAZA, JR., THEODORE J. CHYLACK, JOSEPH J. MCALEE, PETER KONOLIGE, T. TRUXTON HARE, III, AND DAVID S. LUBIN,

Respondents.

ORDER

PER CURIAM

AND NOW, this 30th day of January, 2004, the Petition for Allowance of Appeal and Request for Certiorari, treated as a Petition for Relief Pursuant to Pa.R.A.P. 123, is denied

TRUE COPY FROM RECORD
Attost: JAN 30 2004
s/_____
Patricia Johnson, Court Clerk
Supreme Court of Pennsylvania
Eastern District"

FOURTH ORDER SOUGHT O BE REVIEWED

"IN THE SUPREME COURTOF PENNSYLVANIA
EASTERN DISTRICT

EDWARD J. HABERERN, M. D. No. 67 EM 2003

Petitioner,

v.

SPRAGUE & SPRAGUE, A LAW FIRM, RICHARD A. SPRAGUE, THOMAS A. SPRAGUE, WILLIAM H. WOLF, JR. JAMES J. WEST, H. COLEMAN SWITKAY, VINCENT F. PRESTO, MARIANNE FRESCO, GEOFFREY C. JARVIS, TRACEY MOONEY SCHAEFFER, JOSEPH R. PODRAZA, JR., THEODORE J. CHYLACK, JOSEPH J. MCALEE, PETER KONOLIGE, T. TRUXTON HARE, III, AND DAVID S. LUBIN,

Respondents.

ORDER

PER CURIAM

AND NOW this 26th day of April, 2004, the Application for Reargument is denied,

TRUE COPY FORM RECORD

Attest. APR 26 2004

S/ _____
Patricia Johnson, Chief Clerk
Supreme Court of Pennsylvania
Eastern District"

PERTINENT PROVISIONS OF THE UNITED STATES AND PENNSYLVANIA CONSTITUTIONS AND PENNSYLVANIA RULES OF CIVIL PROCEDURE

UNITED STATES CONSTITUTION:

The Seventh Amendment provides;

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any Court in the United States, than according to the rules of the common law."

The Fourteenth Amendment provides, inter alia:

"Section 1. . . . nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PENNSYLVANIA CONSTITUTION:

Article 1, Section 6 provides, inter alia:

"Trial by jury shall be as heretofore, and the right thereof remain inviolate. . . . ".

Article 1, Section 11 provides, inter alia:

"All courts shall be open; and every man for an injury done him in his lands, goods, persons or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. . . .".

PENNSYLVANIA RULES OF CIVIL PROCEDURE:

Rule 236(a)(2) provides, inter alia:

> **"NOTICE BY PROTHONOTARY OF ENTRY OF ORDER, DECREE OR JUDGMENT**
> **(a) The Prothonotry shall immediately give written notice of the entry of . . . (2) any other order, decree or judgment to each party's attorney of record or, if unrepresented, to each party. The notice shall include a copy of the order, decree or judgment."**

Rule 239(b)(1) provides:

"Local rules shall not be inconsistent with any general rule of the Supreme Court or any Act of Assembly."

Rule 1035.1 provides:

"*After the relevant pleadings are closed,* but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law." (Emphasis supplied)

* * *

(3)

Supreme Court, U.S.
FILED
OCT 14 2004
OFFICE OF THE CLERK

No. 04-359

In The
Supreme Court of the United States

EDWARD J. HABERERN, M.D.,

Petitioner,

v.

SPRAGUE AND SPRAGUE, a Law Firm, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania, Eastern District

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALAN J. DAVIS, ESQUIRE
Counsel of Record
MARTIN C. BRYCE, JR., ESQUIRE
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
215/665-8500

Attorneys for Respondents

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court will reverse an order of the Supreme Court of Pennsylvania where Petitioner never raised any federal question in either the state trial court, the state intermediate appellate court or in the Supreme Court of Pennsylvania?

2. Whether the Supreme Court of Pennsylvania applying Pennsylvania procedural rules properly denied Petitioner's attempts to appeal the dismissal of his case when it was undisputed that Petitioner did not attempt to appeal said dismissal until six months after the deadline to appeal had expired and Petitioner offered no legally justifiable excuse for his failure to comply with state law?

LIST OF PARTIES

Respondents are:

Sprague and Sprague, a Law Firm, Richard A. Sprague, Thomas A. Sprague, William H. Wolf, Jr., James J. West, H. Coleman Switkay, Vincent F. Presto, Marianne Fresco, Geoffrey C. Jarvis, Tracey Mooney Schaeffer, Joseph R. Podraza, Jr., Theodore J. Chylack, Joseph J. McAlee, Peter Konolige, T. Truxton Hare, III and David S. Lubin

TABLE OF CONTENTS

	Page
COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iv
COUNTER-STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI	3
There Is No Jurisdiction For The Requested Writ	3
The Pennsylvania Courts Properly Declined To Hear Petitioner's Untimely Appeal Under Well-Established Pennsylvania Procedural Rules	5
CONCLUSION	9

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Adams v. Robertson, 520 U.S. 83 (1997) 4

Illinois v. Gates, 462 U.S. 213 (1983) 4

Monks v. State of New Jersey, 398 U.S. 71 (1970) 4

STATE CASES

Board of Pensions & Retirement of the City of Phila. v. Jackson, 126 Pa. Cmwlth. 551, 560 A.2d 310 (1989) 7

Criss v. Wise, 566 Pa. 437, 781 A.2d 1156 (2001) 5, 7

Commonwealth Department of Transport v. Grasse, 146 Pa. Cmwlth. 17, 606 A.2d 544 (1991) 8

Commonwealth v. Johnson, 550 Pa. 298, 705 A.2d 830 (1998) 5

Gargano v. Terminix Internat'l Co., 784 A.2d 188 (Pa. Super. 2001) 7

In re Annexation, 2 Pa. Cmwlth. 496, 276 A.2d 549 (1971) 7

In re Condemnation of McCoy Property, 15 Pa. D. & C. 4th 388 (York 1992) 7

Mash v. Old Home Manor, Inc., 298 Pa. Super. 7, 444 A.2d 147 (1982) 6

Thermo-Guard, Inc. v. Cochran, 408 Pa. Super. 54, 596 A.2d 188 (1991) 6

Valley Forge Center Associates v. Rib-It/K.P., Inc., 693 A.2d 242 (Pa. Super. 1997) 6

TABLE OF AUTHORITIES – Continued

Page

FEDERAL STATUTES AND RULES

28 U.S.C. § 1257 3

28 U.S.C. § 1957 1

U.S. S. Ct. R. 10 ..... 1, 4

STATE STATUTES AND RULES

42 Pa. C.S. § 708(c) 6

42 Pa. C.S. § 742 6

Pa. R. App. P. 902 5

Pa. R. App. P. 903(a) 5, 8

Pa. R. App. P. 1502 6

Pa. R. App. P. 1561(b) 6

BRIEF IN OPPOSITION

Plaintiff/Petitioner Edward J. Haberern, M.D. ("Petitioner") fails to identify any federal question, much less an "important federal question," to justify the grant of certiorari in this matter. *See* 28 U.S.C. § 1957; U.S. S. Ct. R. 10. Contrary to Petitioner's arguments, the state courts in this state court case, which involved only issues of state law, properly applied well-established state law in dismissing his case and denying his attempts to appeal *nunc pro tunc*. Therefore, the Petition should be denied.

COUNTER-STATEMENT OF THE CASE

On October 24, 2001, Petitioner filed this action against Respondents alleging that they committed legal malpractice and fraud in the course of litigation on Petitioner's behalf. That litigation was concluded before the Court of Common Pleas of Lehigh County, Pennsylvania during proceedings on February 8 through 11, 1999. It was undisputed below that Petitioner was present in the courtroom during those proceedings, and personally witnessed the trial court enter judgment for Respondents on certain claims and explain in detail its grounds for the dismissal of those claims in that litigation in addition to agreeing to settle other claims before the Court.

In the summer of 1999, Petitioner replaced Respondents with his present counsel, who familiarized himself with the record and the issues no later than August, 1999. Nevertheless, well over two years elapsed before the present action was brought on October 24, 2001. Petitioner's claims were therefore barred by the applicable two

year statute of limitations and Respondents moved for summary judgment on January 11, 2002.

On April 3, 2002, the Court of Common Pleas of Philadelphia County, Pennsylvania, per the Honorable Renee Cardwell Hughes, granted Respondents' motion for summary judgment and dismissed this action with prejudice. The Court of Common Pleas' April 3, 2002 Order entering summary judgment bears the Court's stamp of the same date attesting that "copies [were] sent" pursuant to Rule 236 of the Pennsylvania Rules of Civil Procedure. The Court of Common Pleas' docket sheet further recites that the April 3, 2002 Order was entered April 8, 2002 and that "236 notice given." Indeed, Respondents' counsel received their copy of the Order on April 8, 2002.

Nevertheless, Petitioner failed to timely appeal from the April 3, 2002 Order. On December 6, 2002, over *seven* months after the entry of that order and over *six* months after the deadline to timely appeal, Petitioner sought leave to appeal *nunc pro tunc*. Petitioner, however, failed to offer any evidence of a fraud or breakdown in the operations of the Court of Common Pleas. Nor did Petitioner assert the existence of any federal question or issue in connection with his attempt to appeal *nunc pro tunc*.

In an Order dated February 28, 2003, and entered on March 5, 2003, the Philadelphia Court of Common Pleas denied Petitioner's Petition for Appeal *Nunc Pro Tunc*. Petitioner then filed a Petition for Review in the Superior Court of Pennsylvania on March 20, 2003. Once again, Petitioner failed to raise any federal issue.

In an Order entered May 6, 2003, the Superior Court of Pennsylvania denied Petitioner's Petition for Review. Petitioner then filed what he termed a "Petition for Allowance

of Appeal" with the Supreme Court of Pennsylvania which denied the same on January 30, 2004. The Supreme Court of Pennsylvania denied his subsequent "Application for Reargument" on April 26, 2004. At no point before the Pennsylvania Supreme Court did Petitioner raise any federal issue.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

There Is No Jurisdiction For The Requested Writ

It is well settled that the jurisdiction of this Court is predicated upon the existence of a federal issue in the state courts:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1257.

Thus, this Court has long held that "we have adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner's

federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review." *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (citations omitted). Consequently, this Court will not consider a federal issue raised for the first time in a petition for a writ of certiorari. *See Monks v. State of New Jersey*, 398 U.S. 71 (1970) (dismissing writ of certiorari as "improvidently granted" where federal constitutional issue "has been raised for the first time upon this writ and the state courts have had no opportunity to pass upon it."). *See also Illinois v. Gates*, 462 U.S. 213, 218 (1983) (Supreme Court lacks "jurisdiction unless a federal question had been both raised and decided in the state court below").

Furthermore, Rules 10(b) & (c) of the United States Supreme Court require that a petition for writ of certiorari present an important federal question and provide that such a petition is granted only where:

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals
>
> (c) a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

In the present case, Petitioner *never* raised any federal issues, much less an "important federal question," in the Pennsylvania state courts. Although he now purports to assert his rights under the Seventh and Fourteenth

Amendments to the United States Constitution, he *never* even cited them below much less raised any argument under the United States Constitution. Rather, Petitioner's arguments below were limited solely to whether the Pennsylvania state courts had properly applied their procedural rules when dismissing his case and then refusing to hear any appeal from that dismissal.

Accordingly, under well-settled and long-standing jurisprudence in this Court, Petitioner's petition for a writ of certiorari should be denied.

The Pennsylvania Courts Properly Declined To Hear Petitioner's Untimely Appeal Under Well-Established Pennsylvania Procedural Rules

Under well-settled Pennsylvania law, the Order entered by the Court of Common Pleas on March 5, 2003 was a final order as it left nothing further to be done in the case. *See, e.g.*, *Commonwealth v. Johnson*, 550 Pa. 298, 705 A.2d 830 (1998). Consequently, pursuant to Rules 902 and 903 of the Pennsylvania Rules of Appellate Procedure, if Petitioner wished to appeal from that decision he had to file a notice of appeal on or before April 4, 2003. The rules governing appeals to the Pennsylvania appellate courts are crystal clear: "the notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken." Pa. R. App. P. 903(a). As previously stated by the Supreme Court of Pennsylvania: "In order to perfect an appeal, parties must strictly adhere to the statutory provisions for filing an appeal." *Criss v. Wise*, 566 Pa. 437, 441, 781 A.2d 1156, 1159 (2001). Petitioner, however, failed to file any notice of appeal.

Instead, Petitioner filed his Petition for Review in the Superior Court which cited Rules 1502 and 1561(b) of the Pennsylvania Rules of Appellate Procedure as well as 42 Pa. C.S. §§ 708(c) and 742. However, Rules 1502 and 1561, as well as section 708, deal solely with appeals from determinations of state agencies. Section 742 provides that the Superior Court has "appellate jurisdiction of all appeals from final orders of the courts of common pleas." Of course, in order for the Superior Court to have appellate jurisdiction, Petitioner had to file a timely notice of appeal which he failed to do. It is well settled that the Superior Court "is without jurisdiction to excuse a failure to file a timely notice, as the 30-day period must be strictly construed." *Valley Forge Center Assocs. v. Rib-It/K.P., Inc.*, 693 A.2d 242, 245 (Pa. Super. 1997). Petitioner's "Petition for Review" could *not* serve as a notice of appeal. *Thermo-Guard, Inc. v. Cochran*, 408 Pa. Super. 54, 61, 63, 596 A.2d 188, 192 (1991) ("Nor is there anything in the rules that suggests that an improperly filed petition for permission to appeal should or may be treated as a notice of appeal . . . where a petition for permission to appeal seeking review of a final order, appealable as a right . . . is filed, this court should simply deny the petition"); *Mash v. Old Home Manor, Inc.*, 298 Pa. Super. 7, 10, 444 A.2d 147, 149 (1982) (petition to review improperly brought pursuant to chapter 15 of the Rules of Appellate Procedure quashed: "since this appeal is one covered by Chapter 9 of the Rules, Chapter 15 does not apply."). Accordingly, the Superior Court could have properly denied Petitioner's Petition for Review for that reason alone.

In any event, the Court of Common Pleas properly denied Petitioner's Petition for Appeal *Nunc Pro Tunc*. As a general rule, under well-settled Pennsylvania law an

appeal *nunc pro tunc* may only be granted in certain "extraordinary" circumstances. *Criss*, 566 Pa. at 441, 781 A.2d at 1159. Specifically, "an appeal *nunc pro tunc* may be granted where a fraud or breakdown in the court exists or where the late filing is not the result of an attorney's negligent conduct." *Gargano v. Terminix Internat'l Co.*, 784 A.2d 188, 192 (Pa. Super. 2001). Absent a fraud or a breakdown in the court, an appeal *nunc pro tunc* will only be permitted where the appellant establishes: (1) the notice of appeal "was filed late as a result of non-negligent circumstances either as they relate to the appellant or the appellant's counsel"; (2) "the appellant filed the notice of appeal shortly after the expiration date" and (3) the appellee was not prejudiced by the delay. *Criss*, 566 Pa. at 442, 781 A.2d at 1159. Petitioner failed to offer any argument or evidence to justify an appeal *nunc pro tunc*.

Petitioner never attempted to allege any fraud in the Court of Common Pleas. Nor did Petitioner offer any evidence of, or establish, any breakdown in the operations of the Court of Common Pleas. Consequently, Petitioner's Petition for Appeal *Nunc Pro Tunc* was premised on his allegation of a mere failure to receive notice of the order. However, it is well settled under Pennsylvania law that "[m]ere allegations of a failure to receive notice are insufficient cause for allowing an appeal *nunc pro tunc*." *Board of Pensions & Retirement of the City of Phila. v. Jackson*, 126 Pa. Cmwlth. 551, 554, 560 A.2d 310, 312 (1989). *Accord In re Annexation*, 2 Pa. Cmwlth. 496, 502, 276 A.2d 549, 552 (1971) (allegation of non-receipt of order insufficient to demonstrate breakdown of court's operations); *In re Condemnation of McCoy Property*, 15 Pa. D. & C. 4th 388, 393 (York 1992) (same). Indeed, there never was any reason to ever suspect any breakdown in the Court of

Common Pleas' operations. On the contrary, both the April 3, 2002 Order and the Court's docket sheet attest that notice was mailed, and defense counsel received their copy by mail in due course. *See Commonwealth Dep't of Transp. v. Grasse*, 146 Pa. Cmwlth. 17, 21, 606 A.2d 544, 545 (1991) (because of "rebuttable presumption that the mailed [notice] was received" appeal *nunc pro tunc* could not be permitted based solely on appellant's denial of receipt of notice).

Accordingly, Petitioner failed to establish any ground supporting his appeal *nunc pro tunc*. The Superior Court properly denied Petitioner's Petition for Review for the independent reason that he failed to comply with Rules 902 and 903 of the Pennsylvania Rules of Appellate Procedure, as well as Petitioner's failure to establish grounds for an appeal *nunc pro tunc*. Thereafter, the Supreme Court of Pennsylvania properly declined to hear Petitioner's appeal.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,

ALAN J. DAVIS
Counsel of Record
MARTIN C. BRYCE, JR.
BALLARD SPAHR ANDREWS
& INGERSOLL, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
215/665-8500

Attorneys for Defendants / Respondents Sprague and Sprague, a Law Firm, Richard A. Sprague, Thomas A. Sprague, William H. Wolf, Jr., James J. West, H. Coleman Switkay, Vincent F. Presto, Marianne Fresco, Geoffrey C. Jarvis, Tracey Mooney Schaeffer, Joseph R. Podraza, Jr., Theodore J. Chylack, Joseph J. McAlee, Peter Konolige, T. Truxton Hare, III and David S. Lubin

Dated: October 14, 2004

Supreme Court, U.S.
FILED
NOV 2 2 2004
OFFICE OF THE CLERK

(2)

No. 04-359

In The

Supreme Court of the United States

EDWARD J. HABERERN, M.D.
Petitioner

v.

SPRAGUE & SPRAGUE, a Law Firm, et al.
Respondents

On Petition For Writ of Certiorari
To the Supreme Court of the Commonwealth of Pennsylvania

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Andrew K. Parker, Esquire
I.D. No. 7635
Counsel of Record for Petitioner
371 Tamarack Drive
Allentown, PA 18104
(610) 776-8410

RESPONSE TO COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. **Petitioner immediately upon filing and on the face of the Complaint in the Philadelphia Court of Common Pleas on October 24. 2001 put Respondents *and the world* on notice that Plaintiff in his case had "JURY TRIAL DEMANDED", repeated in subsequent pleadings and proposed Orders at least sixteen (16) times thereafter on the record submitted to the Pennsylvania Supreme Court.**

No Federal Question had accrued nor could have accrued nor was theretofore an issue, until the Supreme Court of Pennsylvania, finally, (*with unequivocal knowledge that Plaintiff had positively elected "JURY TRIAL DEMANDED"*) by silence, by inaction, by Per Curiam Denials of Plaintiff's Requests for Certiorari and by its crystal clear failure to examine the record *had thereby condoned, aided, abetted, violated, obstructed, and abolished Plaintiff's Due Process under both the Seventh and the Fourteenth Amendments of the Constitution of the United States of America, to wit:*

a) By apparently approving of Respondents' putative fraudulent entry and validation of a non-existent *grant of Summary Judgment* (?) on the Prothonotary's docket;

b) By apparent authorization of Respondents' optional circumvention of Rule 236(a) of the Pennsylvania Rules of Civil Procedure, thereby procedurally aiding and abetting Respondents' ability to exact dual *fraudulent procedural judgment notice practice* allegedly sent (by personal choice, directly, not sent, withheld or not even in existence, as in the case at bar) *only by and through the issuing Judge.* Thus, at the option of an evil interested party or parties, the losing adverse party would, as here, never receive the *mandatory actual Prothonotary's 236(a) Judgment Notice of commencement of time from which to effect a timely appeal; and*

c) By ultimately and lastly denying Petitioner-Plaintiff of his

actual day in court, final due process and his requested Jury Trial that is guaranteed by both the Pennsylvania and United States Constitutions and respective Rules of Civil Procedure thereunto appertaining, a distinctly Federal Question.

2, Because NO JUDGMENT IN FACT WAS IN ESSE, neither the Prothonotary nor the alleged Court of Common Pleas in the case at bar had the opportunity to send any legal Judgment Notice whatsoever from which to appeal and a Prothonotary's False Docket Entry of Judgment with NO ACTUAL JUDGMENT is NOT NOTICE OF JUDGMENT, but is feckless, equivocal, fraudulent, non-existent and, in reality and logic, *no criteria where impossibility can neither be construed as timely or untimely.* Contrary to Respondents' equivocation, *neither the Pennsylvania Supreme Court nor any other Court Below (having elected not to file any written opinion* on the merits) *has ever considered, ruled upon or evaluated the facts nor the law of the case, now completely open for full and thorough scrutiny.* Any other construction is mere speculation, theory or equivocation, not the Law.

Reasonable men will agree that Due Process will find that it is foolhardy and impossible to appeal, even Nunc Pro Tunc, from a Non-Existent Judgment shown to exist only as a Docket Entry. For this very reason Petitioner on denial of appeal *nunc pro tunc*, with neither opinions nor justification, *demanded certiorari* (abolished in Pennsylvania with a Petition for Review to replace it: APPENDIX NO. 6) both in the Superior Court and again in the Supreme Court of Pennsylvania. The lack of Judgment Notice in question (APPENDIX NO. 4), explicitly explained (APPENDIX NO. 3) by your Petitioner to be both fraudulent and a "breakdown in the judicial administration of the Court Below, of course, abused and circumvented Pennsylvania Supreme Court Judgment Notice Rule 236(a)(2) of the Pennsylvania Rules of Civil Procedure, which the Superior Court was neither authorized nor equipped to alter, explain, handle or construe, a matter completely within the exclusive jurisdiction and province of the Pennsylvania Supreme Court, endowed with sole authority and duty to change, verify and enforce or abolish the Procedural Rule in question.

change, verify and enforce or abolish the Procedural Rule in question.

RESPONSE TO COUNTER-STATEMENT OF THE CASE

Respondents' explanations, which have attempted to construe, apply or excuse their own and/or the court's actions or inactions below, must be considered to be mere speculation or wishful thinking where, as here, the courts below have not advised us about those constructions and interpretations through the written Opinion. Speculation has no reserved seat in our search and quest for the truth herein, especially via certiorari, where a remedy for breach of the truth is our final goal.

The salient facts of Petitioner's Request for Certiorari are virtually admitted by Respondents, under application of United States Supreme Court Rule 15.2 (APPENDIX 1), namely, the following:

a) A false docket entry of April 8, 2002, with no genuine Judgment to support it (APPENDIX 5);

b) The total absence of any *bona fide judgment* in the Office of the Prothonotary (APPENDIX NO. 5);

c) Respondents' production by brief of a false, forged document Respondents represent to be a judgment (APPENDIX NO. 2);

d) Respondents' failure to authenticate and answer Petitioner's colloquy of ten (10) (APPENDIX NO. 3);

e) Admission and equivocation on page 2 of their Brief of in Opposition that on April 3, 2002 "the Honorable Renee Cardwell Hughes granted Respondents' motion for summary judgment . . . Order entering summary judgment bears the Court's stamp of the same date attesting that 'copies [were] sent *(by the Court)*' pursuant to Rule 236 of the Pennsylvania Rules of Civil Procedure . . . ". Rule

236(a)(2) mandates that Notice be "sent" on receipt of the true Judgment only by the Office of the Prothonotary, *not by the Court.* Respondents' story relates how Respondents circumvented the pertinent Supreme Court Rules, and their methodology for defeat of Notice "never sent" to the Plaintiff (APPENDIX NO. 4).

RESPONSE TO REASONS FOR DENYING CERTIORARI

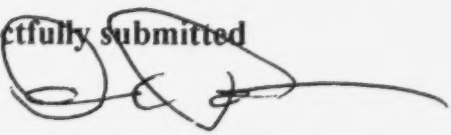
In each instance of breach of fair play herein, Respondents knew that their very objective was to defeat Petitioner's Demand for Jury Trial, universally known and protected by the Seventh Amendment of the United States Constitution, not just for federal litigants but also for those who litigate in State Courts as well. The provision: "where the value in controversy shall exceed twenty dollars" infers State coverage. No known $20.00 claim is within the jurisdiction of or knowingly handled by the Federal Court Litigating System. Enforcement of the guarantee of Jury Trial, as in the case at bar, is well within the province of the United States Supreme Court. Everyone of Petitioner's pleadings below bears his Demand for Jury Trial, well known to the Pennsylvania Supreme Court when it denied Petitioner his Request for Certiorari to preserve his case from oblivion by unscrupulous litigators who would dare defy and circumvent the law and cheat men of their right to be heard by their peers in State Court. The time in right, The need us clear.

Respondents' assertions and citations of case law have no direct application to the admitted facts in the case at bar, where justice was defeated by slight of hand, deliberate deceit and manipulation and circumvention of the Pennsylvania Rules of Court. Petitioner, having been, without explanation or opinion, denied an appeal *nunc pro tunc from a Docket Entry unsupported by a bona fide judgment of record,* knew that the matter was out of hand because of a breakdown in the judicial system which denied him Notice of Judgment from which to appeal. But Petitioner also knew and inferred that there was in fact no *bona fide judgment* in existence from which to appeal nor certiorari proceedings to plead his cause to the courts below to correct the

ongoing miscarriage of justice. Hence, Petitioner proceeded and timely filed in the Superior Court proceeding under Chapter 15 of 42 Pa.C.S.A. section 1501 et seq. (APPENDIX NO. 6), the system's apparent remedy to completely correct all matters at hand. Although speculation, since no opinion was rendered, it is believed that the Superior Court neglected to correct the Rule problem because enforcement and interpretation of a Rule originating with the Supreme Court must be handled by that Court exclusively.

For these and other reasons more evident to this Court, Petitioner believes that this Writ of Certiorari to the Supreme Court of Pennsylvania will permanently close an ugly loophole of injustice.

Respectfully submitted



Andrew K. Parker, Esquire
I.D. 7535
Counsel of Record for Petitioner
371 Tamarack Drive
Allentown, PA 18104
(610) 776-8410

No. 04-359

In The

Supreme Court of the United States

EDWARD J. HABERERN, M.D.
Petitioner

v.

SPRAGUE & SPRAGUE, a Law Firm, et al.
Respondents

On Petition For Writ of Certiorari
To the Supreme Court of the Commonwealth of Pennsylvania

APPENDIX TO REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Andrew K. Parker, Esquire
I.D. No. 7635
Counsel of Record for Petitioner
371 Tamarack Drive
Allentown, PA 18104
(610) 776-8410

APPENDIX NO. 1
SUPREME COURT RULE 15. 2.
WAIVER AND ADMISSIONS BY RESPONDENTS

Rule 15. 2. Provides, inter alia:

" . . . In addition to presenting other arguments . . . the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called upon to the Court's attention in the brief in opposition."

APPENDIX NO. 2 (PSCRR- V. 1, 44a, 51a-2 & 86a)
(PSCRR = PENNSYLVANIA SUPREME COURT REPRODUCED RECORD)

THE FALSE, PURPORTED, UNAUTHENTICATED AND/OR FRAUDULENT REPRESENTATION ATTACHED TO RESPONDENTS' MEMORANDUM OF JANUARY 6, 2003

" Alan J. Davis, Esquire
I.D. No. 0353
Martin D. Bryce, Jr., Esquire
I.D. 59409
BALLARD SPAHR ANDREWS & INGERSOLL, LLP.
1735 Market Street, 51st Floor
Philadelphia, PA 19103
215/665-8500
Attorneys for Defendants Sprague and Sprague, Richard A. Sprague, Thomas A. Sprague, William H.Wolf, Jr.,a/k/a Bill Wolf,James J. West, H.Coleman Switkay,Vincent F.Presto, Geoffrey R.Johnson,Geoffrey C.Jarvis,Joseph R.Podraza,Jr,Theodore J. Chylack, Joseph J. McAlee, Peter Konolige; T. Truxton Hare, III and David S.Lubin

010570

EDWARD J. HABERERN M. D.,	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
Plaintiff	:	CIVIL ACTION - LAW
	:	
V.	:	OCTOBER TERM, 2001
	:	
SPRAGUE AND SPRAGUE, a Law Firm, et al,.	:	N0. 003430
	:	
Defendants.	:	

ORDER

AND NOW, this 3rd day of April, 2002, upon consideration of defendants' Motion for Summary Judgment, and Plaintiff's opposition thereto, it is ORDERED that Defendants' Motion for Summary Judgment is GRANTED and this action is DISMISSED WITH PREJUDICE.

BY THE COURT

(S) (????????????????????)

THE HONORABLE
RENEE CARDWELL HUGHES
^ (rubber stamp: crooked)

COPIES SENT
PURSUANT TO ' "'(b)
APR 0 3 2002,
Firs;;;
User I.D. SLE

PHL_A #15696896 v1

APPENDIX NO. 3 (PSCRR - V. 1, 66a, 67a, 68a & 69a)
PLAINTIFF-PETITIONER'S SUR ANSWER TO RESPONDENTS' SUR REPLY IN SUPPORT OF RESPONSE TO PLAINTIFF'S PETITION FOR APPEAL NUNC PRO TUNC
(Together with Petitioner's unanswered COLLOQUY with respect to Respondents' attempt to offer a forged document as evidence and proof of Respondents' "non-negligent circumstances, fraud and breakdown in the Court Below")

"Plaintiff produced as Exhibit "A" (Appendix No. 4) attached to the Petition for Appeal Nunc Pro Tunc, the Affidavit of Carl Veno, who affirmatively stated, inter alia:

1. That (affiant) has been the General Office Manager for Plaintiff's counsel from February 2002 through November 5, 2002;

2. That Affiant exclusively handled all of Parker's 'incoming mail and facsimile transmissions';

3. That affiant was alerted as to mail sent to Parker by the Philadelphia County Office of the Prothonotary and/or the Judiciary of the Court of Common Pleas;

4. That Parker put Affiant on notice that he expected receipt of notice of a hearing to be set by the Philadelphia Court regarding Defendants' pending Motion for Summary Judgment; and

5. 'NO LETTER, PACKAGE OR CORRESPONDENCE WAS RECEIVED BY ANDREW K. PARKER, ESQUIRE, BY, TROUGH OR FROM THE PROTHONOTARY OR THE JUDICIARY OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY during February, 2002 through November 5, 2002.'

Let the record reflect that at no time did Plaintiff-Petitioner in his Petition for Appeal Nunc Pro Tunc imply, infer or use as an excuse

for non receipt of the purported Order of Judgment (APPENDIX NO. 3), as falsely and repeated contended by counsel for the Respondents (page 4 of Sur-Reply), 'because he relocated his offices.' The time and/or relocation on April 22, 2002 of the Office of Plaintiff's counsel has no relevance nor material bearing on whether or not he was in fact duly notified under Rule 236 of the Pennsylvania Rules of Civil Procedure. However, the fact that Plaintiff received no such Notice does have a material bearing. Respondents' applied methodology accentuated by negative assertions and equivocal lack of evidence to prove those assertions certainly must be considered by the Court. *Cui bono.*

Petitioner is entitled to proof by Affidavit or otherwise of Respondents' bald assertions, touching on hearsay or equivocation, to wit:

1. Was the purported Order actually received by Respondents that same day as they contend (p. 2) on April 8, 2002, having been filed '08-APR 15:49:24', according to the docket entry?

2. Was the purported Order, Respondents' Exhibit A (APPENDIX NO. 2) in fact signed by Judge Hughes in her own handwriting?

3. Did Judge Hughes support her purported Order with a judicial opinion?

4. Did Sharon Echols work for Judge Hughes on April 3, 2002?

5. Did Sharon Echols herself actually stamp on the purported Order the partially obliterated notation in question and thereafter place her initials on the document?

6. Did Sharon Echols and by what medium of communication send the purported Order and cover letter to anyone on April 3, 2002?

7. Why was an original Order of Judgment not prepared and

why, if in fact, was the purported Order with Respondents' counsels' names and address used instead?

8. Why did the purported Order fail to contain the Prothonotary's filing stamp on the document in question?

9. Does the Prothonotary of Philadelphia County, contrary to Rule 236(a)(2) let others send out Notice and Orders of Summary Judgment before entry of the same on the docket?

10. When did a quest for the truth by drawing deficiencies and equivocation to the Court's attention become 'scurrilous', as contended on page 3 of the Sur-Reply?

In addition, it is contended that this case requires careful scrutiny and investigation by Philadelphia judicial authorities and additional questions need to be answered, to wit:

a) Do the above-mentioned combination of deficiencies, questions and inconclusiveness in failing to notify the Plaintiff of the entry of judgment against him amount to a breakdown in the Court's Operations by presumption and/or illustrate equivocal misconduct amounting to such a breakdown?

b) Is the evidence clear and unequivocal so as to demonstrate the breakdown in the Philadelphia Court's Operations (including that of the Prothonotary) and/or unusual circumstances involving non-negligent acts of someone other than your Petitioner, in the Court's failure to give Rule 236 Notice to your Petitioner of a final Order from which a timely appeal might be made, facts which by their impact on Petitioner subject him to the equivalent and voiding consequences of fraud?"

APPENDIX NO. 4 (PSCRR- V. 1, 14a)
AFFIDAVIT OF CARL A. VENO IN SUPPORT OF PETITION FOR APPEAL NUNC PRO TUNC

"IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

EDWARD J. HABERERN, M.D.,	)	
Plaintiff,	)	
	)	**October Term, 2001**
vs.	)	**No. 003430**
	)	
SPRAGUE AND SPRAGUE, a Law Firm,	)	
et al.	)	
Defendants.	)	**JURY TRIAL DEMANDED**

AFFIDAVIT IN SUPPORT OF PETITION FOR APPEAL NUNC PRO TUNC

COMMONWEALTH OF PENNSYLVANIA	)	
	)	**ss**
COUNTY OF LEHIGH	)	

CARL V. VENO, being first duly sworn under oath according to law: deposes and says that he is and has been since June, 1997 the General Office Manager for the Law Offices of Linda S. Luther-Veno, Esquire and Andrew K. Parker, Esquire (I.D. 07635) located at 2814 Walbert Avenue, Allentown, Lehigh County, Pennsylvania from June, 1997 until April 22, 2002, when said attorneys moved to the Paragon Centre - Suite 203, 1611 Pond Road, Allentown, Lehigh County, Pennsylvania, where your affiant has continued to date his duties as the General Office Manager for said attorneys. During this period of time,

your affiant has exclusively, prudently and carefully noted, received, handled and distributed all incoming mail and facsimile transmissions from whatever source addressed to said attorneys and was particulary careful, alerted, advised and watchful for any and all incoming mail from the Office of the Prothonotary or the Judiciary of the Court of Common Pleas in the above-captioned matter as addressed to attorney Andrew K. Parker, who put affiant on notice that he was expecting an important, official Notice from the Philadelphia Court of Common Pleas with respect to a hearing to be set by the Court regarding Defendants' Motion for Summary Judgment. Your affiant can truthfully state, without equivocation or reservation, that NO LETTER, PACKAGE OR CORRESPONDENCE WAS RECEIVED BY ANDREW K. PARKER, ESQUIRE, BY, THROUGH OR FROM THE PROTHONOTARY OR THE JUDICIARY OF THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY during February, 2002 through November 5, 2002,

AND further affiant sayeth not.

S/_____
Carl A. Veno, Office Manage for
Linda S. Luther-Veno, Esquire and
Andrew K. Parker, Esquire

SUBSCRIBED and sworn to before me,
A Notary Public, on this 29th day of November, 2002.

S/ Betty L. Shosh **My commission expires 2/17/03**
Notary Public

Notarial Seal
Betty L.Shosh, Notary Public
Lower Macungie Twp., Lehigh County
My commission expires Feb. 17, 2003

APPENDIX NO. 5 (PSCRR: V. 3, 278a)
AFFIDAVIT OF WILLIAM O. VIVA
NO SUMMARY JUDGMENT FOUND NOR DISCOVERED
FILED IN THIS CASE BY THE PROTHONOTARY
OF PHILADELPHIA COUNTY, PENNSYLVANIA

IN THE SUPREME COURT OF PENNSYLVANIA
Allocatur Docket No. _____

EDWARD J. HABERERN, M.D.,
Petitioner,

vs.

SPRAGUE & SPRAGUE, a Law Firm, *et al.*
Respondents.

CIVIL ACTION - On Appeal from the PER CURIAM Judgment entered May 6, 2003 in the Superior Court of Pennsylvania, No. 42 EDM (C.P. PHILADELPHIA COUNTY No. 003430 October Term 2001)

AFFIDAVIT OF WILLIAM O. VIVA

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF LEHIGH)

William O. Viva, upon being first duly sworn under oath according to law, deposes and says that the following affidavit is made from affiant's own personal knowledge, experience, information and belief; that on April 9, 2003 on directions of Attorney Andrew K. Parker, Esquire, your affiant paid $30.00 cash to the office of the Prothonotary of Philadelphia County Court of Common Pleas and secured a receipt for the sole purpose of obtaining "a Certified Copy of Judge Hughes' Order granting Defendants Motion for

Summary Judgment, dated April 3, 2001, in *Haberern v. Sprague & Sprague, a Law Firm, et al., October Term, No. 003430"*; that said Clerk then advised your affiant that *she could not immediately locate said Order* but would send the Certified Copy directly to the Office of Attorney Parker at the Paragon Center, Suite 203, 1611 Pond Road, Allentown, PA 18104; that Attorney Parker subsequently advised affiant that he had not received the Certified Copy of said Order and, therefore, affiant returned to the Prothonotary's Office on May 23, 2003 with his receipt and demanded that he be furnished with the Certified Copy of said Order for which he had already paid; affiant was made to wait by a female clerk for two to three hours, while she conducted an investigation and search of the courthouse records; the female clerk then returned and advised that she had checked the courthouse records and that she *could not find Judge Hughes' said Order dated April 3, 2001;* and that said female clerk advised your affiant that she would continue her search and if she found the said Order, she sould forward it to Attorney Parker.

And further affiant sayeth not.

S/_____
William O. Viva

SUBSCRIBED and sworn to before me,
a Notary Public, on this 29 day of May, 2003.

S/ Stephen M. Disimone
Notary Public

Notarial Seal
Stephen M. Disimone, Notary Public
Easttown Twp., Chester County
My Commission Expires Sept. 18. 2004

APPENDIX NO. 6 - PETITION FOR REVIEW PENNSYLVANIA RULES OF APPELLATE PROCEDURE 42 C.S.A., section 1501, et seq

Rule 1501(a)(3) provides, inter alia:
"Objections to a determination by a government unit . . . or upon writs of certiorari or prohibition."

Rule 1501(d) provides:
Jurisdiction of courts unaffected. This chapter does not enlarge or otherwise modify the jurisdiction and powers of the Commonwealth Court or any other court.

Note: This chapter applies to review of any 'determination' of a 'government unit' as defined by Rule 102* . . . A 'determination' means 'action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise . . . ".

* "Government unit" is defined as " . . . any court or other officer or agency of the unified judicial system . . . ".

Rule 1502 provides:
Exclusive Procedure

The appeal, the actions of equity, replevin, mandamus and quo warranto, the action for a declaratory judgment, and writs of certiorari and prohibition are abolished insofar as they relate to matters within the scope of a petition for review under this chapter. The petition for review, insofar as applicable under this chapter, *shall be the exclusive procedure for judicial review of a determination of a government unit.* (Emphasis supplied)